

REMARKS

Status of Claims

Claims 52-117 were pending in the application before entry of this amendment. Claims 56-117 have been canceled without prejudice, and Applicant reserves the right to present these claims at a later time. Claims 52-55 have been amended. Claims 118-137 have been added. Therefore, claims 52-55 and 118-137 are now pending in this application.

Claim Amendments

Claims 52-55 have been amended to more clearly recite certain embodiments of the present invention. It was not necessary for the Applicant to make these amendments to meet any requirement of the Patent Act or to overcome any art-based rejection (see below). No new matter has been added. Specifically, support for amendments made to claim 52 can be found, for example, at Abstract, ¶¶ [0007], [0014], [0045]-[0047], [0052], and [0054]-[0068], FIGS. 5, 7, and 8, as well as in canceled claims 56-117.¹ Further, support for amended claims 53-55 can be found, for example, in previously presented claims 53-55, respectively.

Response to the Examiner's Rejections

The Examiner rejected claims 52-117 under 35 U.S.C. § 103(a) as being unpatentable over Chatani (U.S. Patent No. 7,363,384) in view of Pulier (U.S. Patent Application Publication No. 2002/0091840). Applicant believes that, as originally written, claim 52 was patentable over Chatani in view of Pulier. This discussion is moot, however, in light of present amendments to claim 52.

As amended, claim 52 now recites, in part:

*the server selecting a set of the plurality of operations based at least in part on
the processing parameter and the communication parameter ...*

¹ Reference is made to paragraphs of U.S. Patent Application Publication No. 2006/0031511 for the convenience of the Examiner.

Chatani discloses a method for “selection of content in response to [a] communication environment.” Chatani at title. According to Chatani:

the user is presented with a list of content that is available for a download request. The service manager device 115 preferably identifies a list of content that can actually be downloaded given the current capabilities of the user device 110.

Id. at 12:43-47. In other words, Chatani appears to provide a method where content is or is not available to the client:

[b]ased upon the available service levels, the service manager device 115 determines the corresponding content that is actually available to user device 110 for download. The service manager device 115 preferably also identifies content that the user device 110 cannot download because the user device cannot attain the required service level.

Id. at 12:50-56. Therefore, while Chatani may disclose determining whether or not content can be provided to a client, Chatani does not teach or suggest “*the server selecting a set of the plurality of operations based at least in part on the processing parameter and the communication parameter,*” as recited in claim 52.

Meanwhile, Pulier discloses a method of “real-time optimization of streaming media from a plurality of media sources.” Pulier at title. According to Pulier,

[i]f the MPH process finds an available provider to host the streaming media, it selects that provider at step 116. During its first pass through the list of providers, the MPH process selects the first available provider and uses it to begin streaming the media file. Later in the MPH process, if the first provider fails to maintain acceptable bandwidth, the next available provider on the list is selected to continue hosting the media file.

Id. at ¶ [0019]. However, “selecting a provider” does not teach or suggest “*selecting a set of the plurality of operations,*” as recited in claim 52. Furthermore, Pulier’s “MPH” is “a client-based system.” *Id.* at ¶ [0019]. Therefore, Pulier’s selection of a provider is not performed by a server, as recited in claim 52.

Applicant asserts that neither Chatani nor Puller, taken alone or in combination, teaches or suggest these claimed elements. Accordingly, Applicant respectfully requests that the rejection of record of claim 52 be withdrawn. Claims 53-55 depend from claim 52 and are patentable for at least the same reasons.

New Claims

Claims 118-137 are newly presented. New claims 118-137 find ample support in the specification, for example, at Abstract, ¶¶ [0007], [0014], [0045]-[0047], [0052], and [0054]-[0068], FIGS. 5, 7, and 8, as well as in canceled claims 56-117. No new matter has been added. Moreover, Applicant respectfully submits that claims 118-137 are in immediate condition for allowance.

CONCLUSION

Applicant respectfully submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6257-31902/LVP.

Respectfully submitted,

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